

REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

The Examiner was correct that there was no claim 88 and 91 presented when the application was examined. The claims have been renumbered to correct this oversight. With this renumbering, claims 71-104 are now pending in this application with 71-101 being under examination. Previously withdrawn claims 102-104 have been amended to fall within the scope of the subject matter under examination. Reference to the claims in the response below is with the corrected numbering scheme.

Claims 71, 87 and 101-104 (formerly 71, 87 and 103-106) have been amended to correct the respective typographical errors which caused the Examiner's rejection of these claims under 35 U.S.C. 112, second paragraph. New claims 105 and 106, further define the invention of claim 104 as renumbered. It is believed that no new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

III. THE 35 U.S.C. 112, 2nd PARAGRAPH REJECTION HAS BEEN OVERCOME

Claims 71, 87 and 101 (formerly 71, 87 and 103) were rejected as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. It is believed that the amendments to correct the respective typographical errors to these claims overcome the Examiner's rejections.

As claim 101 (formerly 103) was only rejected under 35 U.S.C. 112, second paragraph, claim 101 should be in condition for allowance.

IV. THE 35 U.S.C. 102/103 REJECTION HAS BEEN OVERCOME

Claims 71-100 (formerly 71-87, 89, 90 and 92-102) were rejected as allegedly being anticipated or in the alternative as being obvious by Mayer et al. (U.S. Patent 6,413,911 - "Mayer"). The rejection is traversed.

At the outset, the applicants call attention to amended claims 75 and 76. Claim 75 stipulates that the formulation is an emulsifiable concentrate while claim 76 stipulates that the variable R^a is a radical of the formula (III), (IVa) or (IVc). The corresponding position on Mayer's sulfonylurea compounds does not disclose any of these radicals. Therefore, every element is not taught nor is the identical invention must be shown in as complete detail as is contained in the claim (see MPEP 2131, *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d, 1913, 1920 (Fed. Cir. 1989)).

With regard to remaining claims 71-74 and 77-100, the Mayer reference fails the second requirement for showing anticipation that the identical invention be shown *in as complete detail* as contained in the applicants claim, i.e. anticipation is not established merely because a particular species is possible from the vast scope of potential compounds which are disclosed in a reference. The applicants' claimed invention is specifically directed toward at least one sulfonylurea salt where the nitrogen between the SO₂ moiety and the CO moiety has been deprotonated and formed into a specific salt, namely an S(CH₃)₃ salt.

It is clear from the description in Mayer as well as from the description of the prior art related to their compounds that their inventive concept was the use of different substituents on the triazine ring, i.e. the inclusion of salts was an afterthought and would not direct one of ordinary skill in the art to select the S(CH₃)₃ salt presently claimed. Moreover, to overcome the presumption of obviousness with respect to the prior art of record, the Mayer application relied on a showing of unexpected results comparing the prior art CF₃ compound with their own CF₂Cl compound which further serves to draw attention of the skilled artisan from selecting the S(CH₃)₃ salt presently claimed.

The Mayer reference was also relied upon for supporting a *prima facie* case of obviousness. That the Mayer reference requires a backup position for a rejection based on obviousness alone or with supporting references (discussed below) would also seem to be further evidence that Mayer does not define the identical invention in as complete a detail as the

applicants' claims. For any of the above reasons, the Mayer reference does not anticipate the applicants' claimed formulations.

As indicated above, the Mayer reference was also relied upon for supporting a *prima facie* case of obviousness. The comments provided above also apply with respect to the obviousness rejection. Furthermore, evidence of secondary consideration must also be evaluated when presented during the determination of obviousness. The applicants have provided unexpected results in Table 1 and in the declaration by Dr. Schnabel which accompanied the response dated 23 September 2003 that shows that formulations using the salts of the invention are able to form emulsifiable concentrates whereas using the neutral form or other salts (e.g. sodium) of an otherwise identical compound could not. To date, there has been no evidence of record which shows that the applicants' results would have been expected by those of ordinary skill in the art.

VI. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 71-100 (formerly 71-87, 89, 90 and 92-102) were rejected as allegedly being obvious over Hacker et al. (WO 96/41537 - "Hacker") in view of Gesing et al. (U.S. Patent 6,451,737 - "Gesing") and Mayer, *supra*. The applicants request reconsideration of this rejection for the following reasons.

The Hacker reference is even further removed from Mayer for establishing obviousness of the applicants' claimed invention as it is recognized by the Examiner that Hacker lacks even a mention of trialkyl sulfonium salts much less a more specific recitation for a trimethyl sulfonium salt in their specification. While the applicants disagree with the Examiner's assessment of the what the Gesing and Mayer references teach and still maintain there is a lack of motivation which emanates from the prior art (rather than the Examiner) for combining their isolated teachings with Hacker, there still remains the matter of overcoming the evidence of secondary considerations. As indicated above, the applicants compared formulations with the $S(CH_3)_3$ salt against neutral form and metal salt form of an otherwise identical compound and show that unexpectedly the $S(CH_3)_3$ salt form is able to form a emulsifiable concentrate formulation whereas the neutral form and metal salt form cannot. Attention in this regard is directed to the data of table I, where compounds 4.2 (salt of iodosulfuron), compound 3.6 (salt of foramsulfuron) and compound 4.14 (salt of mesosulfuron) - each of these compounds are encompassed by claims 71-100 (as well as in claims 102-106) - None of the compounds which are outside the scope of the applicants' claimed invention were able to form emulsifiable

concentrates (see Formulations 1, 3 and 6); only the examples from within the scope of the applicants' claims were able to form emulsifiable concentrates (see Formulations 2, 4, 5 and 7).

This unexpected property was not disclosed or suggested within any part of the Hacker, Gesing or Mayer references. Therefore, claims 71-100 are not rendered obvious by Hacker in view of Gesing and Mayer.

REQUEST FOR INTERVIEW

In the interest of adhering to the tenets of compact prosecution and obtaining good customer service (see page 7 of the FY-2004 Performance and Accountability Report), the applicants request that the teachings of MPEP 707.07(j), sections II and III be applied, especially with regard to the offer of suggestion for correction by the Examiner if the rejections are upheld. In accordance with MPEP 713.01, section III, should any issue remain as an impediment to allowance, an interview with the Examiner and SPE are respectfully requested; and, the Examiner is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview ("An interview should normally be arranged for in advance, as by letter, facsimile, electronic mail, telegram or telephone call, in order to insure that the primary examiner and/or the examiner in charge of the application will be present in the office." *Id.*).

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

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